UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE: Administrative Order 2022-73

AMENDMENTS TO THE LOCAL RULES NOTICE OF PROPOSED AMENDMENTS, OF OPPORTUNITY FOR PUBLIC COMMENTS, AND OF HEARING TO RECEIVE COMMENTS.
_____/

The Court's Ad Hoc Committee on Rules and Procedures has recommended that the Court amend the Local General Rules. In accordance with Fed. R. Civ. P. 83(a)(1) and Fed. R. Crim. P. 57(a)(l), it is:

ORDERED that the Clerk of the Court is directed to: (a) publish an abbreviated notice once in the *Daily Business Review* (in each edition published in Miami-Dade, Broward, and Palm Beach Counties, Florida) alerting the public of the opportunity to comment on the proposed rules; (b) post prominently on the Court's website this Order and the attached proposed rule amendments; (c) provide notice to the Court's bar through the *CM/ECF* electronic noticing system; and (d) offer every person who files any papers in any action in this Court, and to give to anyone who so desires, a copy of this Order with the attached proposed rule amendments.

IT IS FURTHER ORDERED that the Court will conduct an *en banc* public hearing on the proposed rule amendments on Thursday, October 6, 2022, at 3:00 p.m. at the Paul G. Rogers Federal Building and United States Courthouse, 701 Clematis Street, West Palm Beach, Florida 33401. Those who desire to appear and offer oral comments on the proposed rule amendments at this hearing shall file written notice to that effect with the Clerk of the Court no later than five days prior to the hearing. Those who desire to offer only written comments on the proposed rule amendments should do so in accordance with the mechanism provided on the Court's website in connection with the publication of the proposed rule amendments.

DONE AND ORDERED in Miami, Florida, this 15th day of September, 2022.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

Copies furnished to:

Hon. William H. Pryor, Jr., Chief Judge, United States Court of Appeals for the Eleventh Circuit
All Southern District of Florida District Judges, Bankruptcy Judges and Magistrate Judges
Ashlyn Beck, Circuit Executive, Eleventh Circuit
Scott M. Dimond, Chair, Ad Hoc Committee on Rules and Procedures
All Members of the Ad Hoc Committee on Rules and Procedures
Library
Daily Business Review

RULE 16.2 COURT ANNEXED MEDIATION

(a) General Provisions.

(1) Definitions. Mediation is a supervised settlement conference presided over by a qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.

A certified mediator is an attorney, certified by the Chief Judge in accordance with these Local Rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides, and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. ~~Absent a settlement, the~~The mediator will report to the presiding Judge only ~~as to~~: (i) whether the case settled (in full or in part) or was adjourned for further mediation~~,~~; (ii) whether the mediator declared an impasse~~, and~~; (iii) whether the mediation was conducted in person or by video-conference; and (iv) pursuant to Local Rule 16.2(e), whether any party failed to ~~attend~~ participate in the mediation.

~~(2) *Purpose.* It is the purpose of the Court, through adoption and implementation of this Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation. Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.~~

(2) Format. Unless the Court orders otherwise, the parties shall decide whether their mediation conference will be conducted in person or by video-conference and, if the parties cannot agree, the mediation conference shall be held by video-conference.

(b) Certification; Qualification of Certified Mediators; Compensation of Mediators.

(1) *Certification of Mediators*. The Chief Judge shall certify those persons who are eligible and qualified to serve as mediators under this Local Rule, in such numbers as the Chief Judge shall deem appropriate. Thereafter, the Chief Judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

(2) L*ists of Certified Mediators*. Lists of certified mediators shall be maintained in the offices of the Clerk of the Court and shall be made available to counsel and the public upon request.

(3) *Qualifications of Certified Mediators*. An individual may be certified to serve as a mediator in this District provided that the individual shall:

(A) be an attorney who has been admitted for at least ten (10) consecutive years to one or more State Bars or the Bar of the District of Columbia; and

(B) currently be a member in good standing of The Florida Bar and the Bar of this Court; and

(C) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(D) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida; and

(E) have substantial experience as a mediator.

The advisory committee may recommend for certification an attorney to serve as a mediator in this District if it determines that, for exceptional circumstances, the applicant should be certified who is not otherwise eligible for certification under this section.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one (1) party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

(4) *Standards of Professional Conduct for Mediators*. All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court-Appointed Mediators adopted by the Florida Supreme Court (the "Florida Rules") and shall be subject to discipline and the procedures therefor set forth in the Florida Rules. Every mediator who mediates a case in this District consents to the jurisdiction of the Florida Dispute Resolution Center and the committees and panels authorized thereby for determining the merits of any complaint made against any mediator in this District.

(5) *Oath Required*. Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(6) *Disqualification of a Mediator*. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S. C. § 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. § 455.

(7) *Compensation of Mediators*. Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the Chief Judge, if the mediator is appointed by the Clerk on a blind, random basis; or (b) at such rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five (45) days of invoice and shall be enforceable by the Court upon motion.

(c) Types of Cases Subject to Mediation. Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

(1) Habeas corpus cases;

(2) Motion to vacate sentence under 28 U.S.C. § 2255;

(3) Social Security cases;

(4) Civil forfeiture matters;

(5) IRS summons enforcement actions;

(6) Land condemnation cases;

(7) Default proceedings;

(8) Student loan cases;

(9) Naturalization proceedings filed as civil actions;

(10) Statutory interpleader actions;

(11) Truth-in-Lending Act cases not brought as class actions;

(12) Letters rogatory; and

(13) Registration of foreign judgments.

(d) Procedures to Refer a Case or Claim to Mediation.

(1) *Order of Referral*. In every civil case excepting those listed in Local Rule 16.2(c), the Court shall enter an order of referral similar in form to the proposed order available on the Court's website (www.flsd.uscourts.gov), which shall:

(A) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(B) Direct the parties, within fourteen (14) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2(b) but may by mutual agreement select any individual as mediator. The parties shall file and serve a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file and serve a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(C) Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

(2) *Coordination of Mediation Conference*. Plaintiff's counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

(3) *Stipulation of Counsel*. Any action or claim may be referred to mediation upon stipulation of the parties.

(4) *Withdrawal from Mediation*. Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding Judge at any time, before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

(e) Party ~~**Attendance**~~ **Participation** Required. Unless excused in writing by the presiding Judge, all parties and required claims professionals (e.g., insurance adjusters) ~~shall be physically present at~~ must participate in the mediation conference with full authority to negotiate a settlement:

(i) if the mediation is being conducted by video-conference, participation requires connecting to and participating via video and audio in the mediation conference; and

(ii) if the mediation is being conducted in person, participation requires attending the mediation conference in person (i.e., in person if the party is a natural person, not through an agent;

or ~~by~~ if the party is an entity by the personal attendance of ~~a corporate~~an entity representative if the party is an entity~~) with full authority to negotiate a settlement.~~).

If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286, and is a defendant or counterclaim defendant in the litigation, that party shall be deemed to ~~appear at a~~ participate in the mediation conference by the ~~physical presence~~ participation of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The representative shall not be solely the public entity's counsel (or firm) of record, however, the representative may be the public entity's in-house counsel where another counsel of record for the public entity is also present. In cases where the in-house counsel is counsel of record, that counsel and another representative may act as duly authorized representatives of the public entity. In cases where the parties include a public entity and/or individuals who were or are employed by a public entity or elected officials of a public entity, such individual parties do not need to attend the mediation conference if all claims asserted against the individuals are covered by insurance or by an indemnification from the public entity for purposes of mediation. Notwithstanding the foregoing, counsel representing the individual defendants shall provide the individual defendants with notice of the mediation conference and the individual defendants shall have the right to attend the mediation conference. The mediator shall report non-~~attendance~~participation to the Court. Failure to comply with the ~~attendance~~ participation or settlement authority requirements may subject a party to sanctions by the Court.

(f) Mediation Report; Notice of Settlement; Judgment.

(1) *Mediation Report*. Within seven (7) days following the mediation conference, the mediator shall provide the parties with a Mediation Report. If the mediator is an authorized user of the Court's electronic filing system (CM/ECF) then the mediator shall electronically file and serve a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall either: (a) file the Mediation Report conventionally; or (b) with the consent of the parties, arrange for one of the parties to file a "Notice of Filing Mediator's Report," which shall attach the report as an exhibit.

(2) *Notice of Settlement*. In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement pursuant to the requirements of S.D. Fla. L.R. 16.4.

(g) Trial upon Failure to Settle.

(1) *Trial upon Failure to Settle*. If the mediation conference fails to result in a settlement, the case will be tried as originally scheduled.

(2) *Restrictions on the Use of Information Derived During the Mediation Conference*. All proceedings of the mediation shall be confidential and are privileged in all respects as provided under federal law and Florida Statutes § 44.405. The proceedings may not be reported, recorded, placed into evidence, made known to the Court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done

at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011; December 3, 2012; December 1, 2014; December 1, 2015; December 1, 2017; December 3, 2018; December 2, 2019~~.~~; December 1, 2022

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RULE 26.1 DISCOVERY AND DISCOVERY MATERIAL (CIVIL)

(a) Generally. Parties may stipulate in writing to modify any practice or procedure governing discovery hereunder unless doing so would violate a Court-ordered deadline, obligation, or restriction.

(b) Service and Filing of Discovery Material. Initial and expert disclosures and the following discovery requests, responses, objections, notices or any associated proof of service shall not be filed until they are used in the proceeding or the court orders their filing: (1) deposition transcripts; (2) interrogatories; (3) requests for documents, electronically stored information or things, or to permit entry upon land; (4) requests for admission; (5) notices of taking depositions or notices of serving subpoenas; and (6) privilege logs.

(c) Discovery Material to Be Filed at Outset of Trial or at Filing of Pre-trial or Post-trial Motions. If any written discovery is to be used at trial or is necessary to a pre-trial or post-trial motion, the portions to be used shall be filed with the Clerk of the Court, and served on all parties, at the outset of the trial or at the filing and service on all parties of the motion insofar as their use can be reasonably anticipated by the parties having custody thereof.

(d) Completion of Discovery. Party and non-party depositions must be scheduled to occur, and written discovery requests and subpoenas seeking the production of documents must be served in sufficient time that the response is due on or before the discovery cutoff date. Failure by the party seeking discovery to comply with this paragraph obviates the need to respond or object to the discovery, appear at the deposition, or move for a protective order.

(e) Interrogatories and Production Requests.

(1) Each interrogatory objection and/or response must immediately follow the quoted interrogatory, and no part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(2) Assertion of Privilege:

(A) Where an objection is made to any interrogatory or subpart thereof or to any production request under Federal Rule of Civil Procedure 34, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

(B) Where a claim of privilege is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and a complete answer is not provided on the basis of such assertion, within the time provided by subpart (D) below:

(i) The party asserting the privilege shall in the objection to the interrogatory or document demand, or subpart thereof, identify the

nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) The following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(a) For documents or electronically stored information, to the extent the information is readily obtainable from the witness being deposed or otherwise: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information for a subpoena duces tecum, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(b) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

(c) For documents, electronically stored information, things, or oral communications withheld on the basis of a claim of trade-secret privilege (other than the alleged trade secrets at issue in any claim for misappropriation of trade secrets asserted under the Defend Trade Secrets Act, 18 U.S.C. §1836 et seq., the Uniform Trade Secrets Act as adopted by any State, or any other law), the party asserting the objection shall generally describe: (1) the documents, electronically stored information, things, or oral communications being withheld; and (2) the general nature of the alleged trade secret (without revealing the alleged trade secret) contained therein.

(C) This rule requires preparation of a privilege log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection except the following: written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action.

(D) Timing for Party Discovery: Unless the parties agree on a different time frame or the Court orders otherwise, the privilege log required under subpart (C) above shall be served no later than fourteen (14) days following service of: (i) any interrogatory response or document production from which some information or documents are withheld on the basis of such privilege or protection; or (ii) the response to the request for production if all responsive documents are being withheld on the basis of such privilege or protection.

(E) Timing for Non-Party Discovery: Unless the party propounding a non-party subpoena under Federal Rule of Civil Procedure 45(e)(2)(A) and the recipient of such a subpoena agree on a different time frame or the Court orders otherwise, the information required to be provided under Federal Rule of Civil Procedure 45(e)(2)(A)(ii) shall be served no later than (14) days following service of: (i) any document production provided in response to such a subpoena from which some documents are withheld on the basis of a claim of privilege or work product protection; or (ii) any claim of privilege or work product protection in response to the subpoena if all responsive documents are being withheld on the basis of such privilege or protection.

(3) Whenever a party answers any interrogatory by reference to records or materials from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(d), the answering party shall make available:

(A) any electronically stored information or summaries thereof that it either has or can adduce by a relatively simple procedure, unless those materials are privileged or otherwise immune from discovery.

(B) any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless those materials are privileged or otherwise immune from discovery.

(C) the records and materials for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.

(4) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party

from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Federal Rule of Civil Procedure 26(b)(2)(C). The Court may specify conditions for the discovery. Absent exceptional circumstances, the Court may not impose sanctions under these Local Rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(5) The documents, electronically stored information, or things should be referenced to specific paragraphs of a request for production where practicable, unless the producing party exercises its option under Federal Rule of Civil Procedure 34(b) to produce documents as they are kept in the usual course of business. The party producing documents in response to a request for production has an obligation to explain the general scheme of record-keeping to the inspecting party. The objective is to acquaint the inspecting party generally with how and where the documents, electronically stored information, or things are maintained.

(6) Each page of any document produced in a non-electronic format must be individually identified by a sequential number that will allow the document to be identified but that does not impair review of the document.

(7) A party responding to a request for production of documents or materials shall serve a Notice of Completion of Production at the time that party produces (or otherwise makes available) the last of the documents or other materials that are responsive to the request that are not being withheld pursuant to an objection.

(f) Invocation of Privilege during Depositions.

(1) Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion, upon request the attorney or deponent asserting the privilege shall state the specific nature of the privilege being claimed unless divulgence of such information would cause disclosure of privileged information.

(2) After a claim of privilege has been asserted, unless divulgence of requested information would cause disclosure of privileged information, the attorney or party seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege, including questions about the topics set forth in Local Rule 26.1(e)(2)(B)(ii) above.

(g) Discovery Motions**.**

(1) ~~(1) *Time for Filing*. All disputes related to~~ Discovery Motions and Other Procedures for Resolving Discovery Disputes. Many judges have established specific discovery ~~shall be presented~~procedures, which practitioners and pro se parties should review carefully. Some of those procedures are available at https://link.edgepilot.com/s/460f1ad1/jwLC4Euu30_YFKSMeeNatg?u=https://www.flsd.uscourts.gov/judges-info. The following rules shall govern discovery disputes unless they conflict with the assigned judge's procedures, in which case such procedures shall control.

(2) Requirements and Deadlines for Seeking Court Intervention Concerning Discovery Disputes

(A) A party must submit any discovery dispute to the Court by service of a motion (or, if the ~~Court has established a different practice for presenting discovery disputes, by other Court-approved method~~assigned judge prohibits discovery motions, in accordance with the assigned judge's discovery procedures) within ~~(30) days from the: (a) original due date (or later date if extended by the Court or the parties) of the~~ the time periods set forth in (i)-(iv), as applicable:

(i) for a discovery dispute relating to a written response or objection to ~~the~~a discovery request or to a privilege log, a party shall submit the dispute within twenty-eight (28) days of service of the written response or objection that is the subject of the dispute; ~~(b) date of the deposition in which the dispute arose; or (c) date on which a party~~

(ii) for a discovery dispute relating to a deposition that has been completed, a party shall submit the dispute within twenty-eight (28) days of the last day of testimony in the deposition giving rise to the dispute;

(iii) for a discovery dispute relating to the sufficiency of a production of documents or other materials, a party shall submit the dispute within twenty-eight (28) days of the producing party's service of the Notice of Completion of Production as required by S.D. Fla. L.R. 26.1(e)(7); and

(iv) for any other discovery dispute, a party shall submit the dispute within twenty-eight (28) days of the date when the issue was first ~~learned of or should have learned of a purported deficiency concerning the production of discovery materials.~~ raised with the opposing party.

(B) Failure to ~~present the~~submit a discovery dispute to the Court within ~~that timeframe,~~the time periods set forth in (A)(i)-(iv), absent a showing of good

cause ~~for the delay~~, may ~~constitute a waiver of the relief sought at the~~ , in the Court's discretion~~.~~ , constitute grounds for denial of the requested relief.

(C) The ~~thirty (30) day period~~deadlines set forth in ~~this rule~~(A)(i)-(iv) may be extended once for up to seven (7) ~~additional~~ days by an unfiled, written stipulation between the parties, provided that the stipulation does not conflict with ~~a~~any Court order.

~~(2) *Motions to Compel*. Except for motions grounded upon complete failure to respond to the discovery sought to be compelled or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Federal Rules of Civil Procedure 33, 34, 36 and 37, or to compel compliance with subpoenas for production or inspection pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), shall, for each separate interrogatory, question, request for production, request for admission, subpoena request, or deposition question, state: (A) verbatim the specific item to be compelled; (B) the specific objections; (C) the grounds assigned for the objection (if not apparent from the objection); and (D) the reasons assigned as supporting the motion as it relates to that specific item. The party shall write this information in immediate succession to enable the Court to rule separately on each individual item in the motion.~~

~~(3) *Motions for Protective Order*. Except for motions for an order to protect a party or other person from whom discovery is sought from having to respond to an entire set of written discovery, from having to appear at a deposition, or from having to comply with an entire subpoena for production or inspection, motions for protective order under Federal Rule of Civil Procedure 26(c) shall, for each separate interrogatory question, request for production, request for admission, subpoena request, or deposition question, state: (A) verbatim the specific item of discovery; (B) the type of protection the party requests; and (C) the reasons supporting the protection. The party shall write this information in immediate succession to enable the Court to rule separately on each individual item in the motion.~~

(D) The duty to conduct a pre-filing conference pursuant to S.D. Fla. L.R. 7.1(a)(3) shall not toll the deadlines set forth in (A)(i)-(iv) or any deadline provided by the assigned judge's discovery procedures unless those discovery procedures specifically provide otherwise.

(3) Unless an assigned judge's discovery procedures provide otherwise, a discovery motion and the memorandum in opposition are each limited to ten (10) pages, and the reply memorandum is limited to five (5) pages. If applicable, the moving party must attach to the motion the disputed discovery item and any objection and response thereto.

(h) Reasonable Notice of Taking Depositions. Unless otherwise stipulated by all interested parties, pursuant to Federal Rule of Civil Procedure 29, and excepting the circumstances governed by Federal Rule of Civil Procedure 30(a), a party desiring to take the deposition within the State of Florida of any person upon oral examination shall give at least seven (7)

days' notice in writing to every other party to the action and to the deponent (if the deposition is not of a party), and a party desiring to take the deposition in another State of any person upon oral examination shall give at least fourteen (14) days' notice in writing to every other party to the action and the deponent (if the deposition is not of a party).

Failure to comply with this rule obviates the need for protective order.

Notwithstanding the foregoing, in accordance with Federal Rule of Civil Procedure 32(a)(5)(A), no deposition shall be used against a party who, having received less than eleven (11) calendar days' notice of a deposition as computed under Federal Rule of Civil Procedure 6(a), has promptly upon receiving such notice filed and served a motion for protective order under Federal Rule of Civil Procedure 26(c)(1)(B) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(i) Subpoenas; Cooperation. Whenever a party, before trial, receives objections, documents, electronically stored information, or other things from a non-party in response to a subpoena, the party receiving same shall promptly notify all other parties of such receipt, and shall, upon request, make the materials available for inspection to all other parties in the same form or format as received from the non-party. The other parties may request copies of objections, documents, electronically stored information, or other things, but the expense associated with providing such copies shall be borne by the party requesting the copies, except by order of the Court for good cause shown. Nothing in this subdivision is intended to create, eliminate, enlarge, or reduce any post-judgment notice, disclosure, production, or inspection obligations.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2001; paragraph G.3 amended effective April 15, 2003; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; April 15, 2011; December 1, 2011; December 1, 2014; December 1, 2015; December 1, 2016; December 3, 2018; December 2, 2019; December 1, 2021; December 1, 2022.

RULE 88.10 CRIMINAL DISCOVERY

(a) A defendant's request to the Court for entry of the Standing Discovery Order shall constitute a discovery request by the defendant under Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), and (F), and, following entry of the Standing Discovery Order, the government shall comply with the obligations imposed upon it by Fed. R. Crim. P. 16(a)(1)(A-F), and shall permit the defendant to inspect and copy the written or recorded statements made by the defendant, or copies thereof, or supply copies thereof, which are within the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government, all subject to the provisions of Fed. R. Crim. P. 16(a)(2).

(b) Following a defendant's request to the Court for entry of the Standing Discovery Order and the Court's entry of the Standing Discovery Order, the defendant, subject to the provisions of Fed. R. Crim. P. 16(b)(2), shall:

(1) after the government complies with Fed. R. Crim. P. 16(a)(1)(E), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(A); and

(2) after the government complies with Fed. R. Crim. P. 16(a)(1)(F), comply with the obligations that arise under Fed. R. Crim. P. 16(b)(1)(B).

(c) The government shall reveal to the defendant and permit inspection and copying of all information and material known to the government which may be favorable to the defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Agurs*, 427 U.S. 97 (1976).

(d) The government shall disclose to the defendant the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959).

(e) The government shall supply the defendant with a record of prior convictions of any alleged informant who will testify for the government at trial.

(f) The government shall state whether defendant was identified in any lineup, showup, photo array or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

(g) The government shall advise its agents and officers involved in this case to preserve all rough notes.

(h) The government shall comply with the notice obligations set forth in Federal Rule of Evidence 404(b).

(i) The government shall state whether the defendant was an aggrieved person, as defined in 18 U.S.C. § 2510(11), of any relevant electronic surveillance that was authorized pursuant to 18 U.S.C. § 2516 and 18 U.S.C. § 2518 and that has been unsealed in accordance with 18 U.S.C. § 2518, and if so, shall set forth in detail the circumstances thereof.

(j) The government shall have transcribed the grand jury testimony of all witnesses who will testify for the government at the trial of this cause, preparatory to a timely motion for discovery.

(k) The government shall, upon request, deliver to any chemist selected by the defense, who is presently registered with the Attorney General in compliance with 21 U.S.C. §§ 822 and 823, and 21 C.F.R. § 101.22(8), a sufficient representative sample of any alleged contraband which is the subject of this indictment, to allow independent chemical analysis of such sample.

(l) The government shall permit the defendant, his counsel and any experts selected by the defense to inspect any automobile, vessel, or aircraft allegedly utilized in the commission of any offenses charged. Government counsel shall, if necessary, assist defense counsel in arranging such inspection at a reasonable time and place, by advising the government authority having custody of the thing to be inspected that such inspection has been ordered by the court.

(m) The government shall provide the defense, for independent expert examination, copies of all latent fingerprints or palm prints which have been identified by a government expert as those of the defendant.

(n) The parties shall make every possible effort in good faith to stipulate to all facts or points of law the truth and existence of which is not contested and the early resolution of which will expedite the trial.

(o) **Schedule of Discovery**.

(1) Discovery which is to be made in connection with a pre-trial hearing other than a bail or pre-trial detention hearing shall be made not later than forty-eight (48) hours prior to the hearing. Discovery which is to be made in connection with a bail or pre-trial detention hearing shall be made not later than the commencement of the hearing.

(2) Discovery which is to be made in connection with trial shall be made not later than fourteen (14) days after the arraignment, or such other time as ordered by the court.

~~(3~~(3) When discovery concerning expert witnesses has been requested and is required to be made pursuant to Fed. R. Crim. P. 16(a)(1)(G) or Fed. R. Crim. P. 16(b)(1)(C), it shall be made as follows, or at or such other time as ordered by the court:

(A) An initial written summary of the anticipated testimony that is subject to disclosure shall be provided to the requesting party within fourteen (14) days of that party's written request pursuant to Fed. R. Crim. P. 16(a)(1)(G)(i) or Fed. R. Crim. P. 16(b)(1)(C)(i). That summary must provide a synopsis of the anticipated opinions, the bases and reasons for those opinions, and the anticipated witness's qualifications.

(B) The more-detailed information required pursuant to Fed. R. Crim. P. 16(a)(1)(G) or Fed. R. Crim. P. 16(b)(1)(C) must be disclosed:

(i) no later than twenty-one (21) days before the commencement of trial for testimony that the government intends to present at trial during its case-in-chief;

(ii) no later than seven (7) days before the commencement of trial for testimony that the government intends to present at trial during its rebuttal to counter testimony that the defendant has timely disclosed under Fed. R. Crim. P. 16(b)(1)(C);

(iii) no later than twenty-one (21) days before the commencement of trial for testimony that the defendant intends to present at trial during the defendant's case-in-chief, including testimony on the defendant's mental condition; and

(iv) no later than seven (7) days before the commencement of trial for testimony that the defendant intends to present at trial to counter testimony that the government has timely disclosed under Fed. R. Crim. P. 16(a)(1)(G).

A defendant or the government may request, pursuant to this rule and Fed. R. Crim. P. 16(d) or Fed. R. Crim. P. 16.1(b), that the court exercise its discretion and alter the default deadlines established by this rule. Any such request shall set forth the reasons (for example, to ensure sufficient time to provide effective assistance of counsel, prepare adequately for trial, find and secure an expert witness, or prepare the required expert disclosure) and the factual circumstances that warrant the requested modification of the expert discovery timetable.

(4) Discovery which is to be made in connection with post-trial hearings (including, by way of example only, sentencing hearings) shall be made not later than seven (7) days prior to the hearing. This discovery rule shall not affect the provisions of Local Rule 88.8 regarding pre- sentence investigation reports.

~~(4~~(5) It shall be the continuing duty of counsel for both sides to immediately reveal to opposing counsel all newly discovered information or other material within the scope of this Local Rule.

(~~5~~6) In accordance with Fed. R. Crim. P. 16.1(a), no later than fourteen (14) days after a defendant's arraignment, the attorney for the government and the defendant's attorney must confer and try to agree on:

(A) any anticipated request for modification of the timetables and procedures for pretrial disclosure prescribed by this rule and Fed. R. Crim. P. 16; or

(B) a timetable and procedures for pretrial disclosure under Rule 16 if the Standing Discovery has not been requested and entered.

In accordance with Fed. R. Crim. P. 16.1(b), to facilitate preparation for trial, one or both parties may ask the court to modify the time, place, manner, or other aspects of disclosure prescribed by this rule or Fed. R. Crim. P. 16, or to determine the time, place, manner or other aspects of disclosure that have not already been determined by this rule or Fed. R. Crim. P. 16.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1998; April 15, 2000; April 15, 2003; April 15, 2005; April 15, 2007; April 15, 2010; December 2, 2013; December 1, 2015; December 1, 2016; December 2, 2019~~,~~; December 1, 2020~~.~~; December 1, 2022

RULE 4. APPEARANCES

(a) Who May Appear Generally. ~~Except when an appearance pro hac vice is permitted by the Court, only~~Only members of ~~the bar of~~ this ~~Court~~Court's bar may appear as attorneys before ~~this Court~~the Court, except when the Court permits an appearance pro hac vice. Attorneys residing within this District and practicing before this Court are expected to be members of the bar of this Court.

(b) Appearance Pro Hac Vice.

(1) An attorney who is a member in good standing of the bar of any United States Court~~,~~ or of the highest Court of any State or Territory or Insular Possession of the United States~~,~~ but is not admitted to practice in the Southern District of Florida may, upon submission of a pro hac vice motion filed and served by co-counsel admitted to practice in this District, be permitted to appear and participate in a particular case. A certification that the applicant has studied the Local Rules, is a member in good standing of a qualifying bar, and has not filed more than three pro hac vice motions in different cases in this District within the last 365 days shall accompany the pro hac vice motion together with such appearance fee as may be required by administrative order. If permission to appear pro hac vice is granted, such appearance shall not constitute formal admission or authorize the attorney to file documents via CM/ECF.

(2) Lawyers who are not members of the bar of this Court shall not be permitted to engage in general practice in this District. For purposes of this rule, the filing of more than three motions to appear pro hac vice within a 365-day period in separate ~~representations~~cases before the Courts of this District shall be presumed to be a "general practice." Upon written motion and for good cause shown, the Court may waive or modify this prohibition.

(3) ~~The~~A pro hac vice motion shall conform to the form provided for these purposes on the Court's website and designate at least one member of the bar of this Court ~~and~~ who is authorized to file through the Court's electronic filing system, with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom filings shall be served, and who shall be required to electronically file and serve all documents and things that may be filed and served electronically, and who shall be responsible for filing and serving documents in compliance with the CM/ECF Administrative Procedures. See Section 2B of the CM/ECF Administrative Procedures. The pro hac vice motion must be accompanied by a written statement consenting to the designation, and the address and telephone number of the named designee(s). Upon written motion and for good cause shown, the Court may waive or modify the requirements of such designation.

(4) An attorney admitted pro hac vice for one or more parties may appear on behalf of additional parties in the same case by filing a Notice of Appearance Pro Hac Vice. No additional appearance fee is required. The Notice must state that all information provided in support of the initial pro hac vice motion remains current and correct, including the

sponsoring co-counsel. If any such information has changed since the filing of the initial pro hac vice motion, the attorney may not use the notice procedure set forth herein and must instead repeat the process described in paragraphs (1) and (3) above.

(c) Appearance Ad Hoc. An attorney acting on behalf of this Court's Volunteer Attorney Program may, upon written motion and by leave of court, be permitted to appear for an individual proceeding pro se in a civil matter for the sole purpose of assisting in the discovery process. If the appearance is permitted, when its purpose has been completed the attorney shall give notice to the Court, the pro se civil litigant, and opposing counsel that the ad hoc appearance is terminated.

(d) Government Attorneys. Any full-time United States Attorney, Assistant United States Attorney, Federal Public Defender and Assistant Federal Public Defender and attorney employed full time by and representing the United States government, or any agency thereof, and any Attorney General and Assistant Attorney General of the State of Florida may appear and participate in particular actions or proceedings on behalf of the attorney's employer in the attorney's official capacity without petition for admission. Any attorney so appearing is subject to all rules of this Court.

Effective December 1, 1994. Amended effective Jan. 1, 1996; April 15, 2007; April 15, 2010; December 1, 2014; December 1, 2015; December 1, 2017; December 3, 2018; December 1. 2022.